



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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LITIGATION BUREAU

Writer Direct: 518-776-2583

March 29, 2024

Via CM/ECF

The Honorable Daniel J. Stewart
United States Magistrate Judge
United States District Court, Northern District of New York
James T. Foley United States Courthouse
Albany, New York 12207

Re: *Richey v. Sullivan*
Case No. 1:23-CV-00344-AMN-DJS

Dear Judge Stewart:

This Office represents Defendants Ann Marie T. Sullivan, MD, the New York State Office of Mental Health, and New York State Office of NICS Appeals and Safe Act in this action. In accordance with the Court's Text Order entered on March 14, 2024 (ECF No. 29), the above-referenced Defendants respectfully submit the following withheld documents for the Court's *in camera* review.

The above-referenced Defendants respectfully submit that these documents were properly withheld as privileged. Should the Court determine that some or all of these documents should be disclosed, the above-referenced Defendants submit that they should be disclosed using the "CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation permitted by the Protective Order (ECF No. 30 at p. 4).

1. Memorandum dated March 29, 2022.

This document was properly withheld based on the deliberative process privilege. It is a predecisional, intra-agency summary prepared by staff to assist the NICS Review Panel in reaching a determination of Plaintiff's application for a Certificate of Relief from Disabilities. *See Tigue v. U.S. Dep't of Just.*, 312 F.3d 70, 76 (2d Cir. 2002). The final letter determination, dated July 28, 2022, was disclosed to Plaintiff.

2. Two draft letters, dated May 2022, from the NICS Office to Plaintiff.

These documents were properly withheld based on the deliberative process privilege. They are draft documents reflecting non-final agency determinations and deliberations. *See Automobile Club of New York, Inc. v. The Port Auth. of New York & New Jersey*, No. 11-CV-6746, 2015 WL 3404111, at *3 (S.D.N.Y. May 27, 2015). The final letter, dated July 28, 2022, was disclosed to Plaintiff.

3. Two e-mails, dated July 27, 2022.

These e-mails were properly withheld based on the attorney-client privilege. They are correspondence from the client to counsel providing information, and correspondence from counsel acknowledging receipt of client information. *See In re County of Erie*, 473 F.3d 413, 418 (2d Cir. 2007).

Pursuant to 28 U.S.C. § 1746, I declare that, on this date, I caused the individual listed below to be served with a copy of this letter via ECF.

Respectfully submitted,

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